

ORDINANCE AMENDING
THE ZONING ORDINANCE OF THE CITY OF ROCKY MOUNT
TO PROVIDE INCREASED PROTECTION TO PERSONS AND PROPERTY
FROM FLOOD HAZARDS AND TO MINIMIZE THE EXPENDITURE
OF PUBLIC FUNDS REQUIRED TO ALLEVIATE
DAMAGE CAUSED BY FLOODING

WHEREAS, on September 15, 1999, Hurricane Floyd inundated the Rocky Mount area with torrential rainfall which resulted in flooding that covered approximately twenty-five (25) percent of the land area within the corporate limits of the City of Rocky Mount; and

WHEREAS, the flooding in the aftermath of Hurricane Floyd resulted in three (3) deaths and over four-hundred-million (400,000,000) dollars of property damage in the City of Rocky Mount; and

WHEREAS, the Flood Hazard Boundary Map and Flood Insurance Rate Map for the City, last revised on January 20, 1982, and were shown to be woefully out of date by the flooding which resulted from Hurricane Floyd; and

WHEREAS, the City Council desires to protect persons and property from flood hazards and to minimize the expenditure of public funds to alleviate damage caused by flooding; and

WHEREAS, the City has received and reviewed the Preliminary Flood Insurance Studies for the Edgecombe County portion of the City, dated November 20, 2002, and the Nash County portion of the City, dated March 7, 2003; and

WHEREAS, while the flood hazards shown on the Preliminary Insurance Study are subject to change based upon further review and a statutory appeal period, it is the opinion of the City Council that the Preliminary Insurance Study represents the best available data with regard to current flood hazards in the City; and

WHEREAS, the City Council further finds that the data shown on the Preliminary Flood Insurance Study reasonably reflects flood conditions expected during periods of heavy rainfall and are not known to be scientifically or technically incorrect; and

WHEREAS, the City Council believes that it is in the best interest of its citizens and residents that the Preliminary Flood Insurance Study should be utilized without delay as the best available data to protect lives and property from flooding in the City;

NOW, THEREFORE, be it ordained by the City Council of the City of Rocky Mount:

Section 1. Section VII.E “Flood protection zoning overlay” is rewritten to read as follows:

VII.E. Flood protection zoning overlay.

A. Purposes and Intent.

1. *Statutory Authorization:* The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.
2. *Findings of Fact:*
 - a. The areas of special flood hazard of the City of Rocky Mount are subject to periodic inundation which can result in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 - b. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages.
 - c. The areas of special flood hazard also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the Flood Insurance Study for the City of Rocky Mount. This includes

detailed flood information generated as required by this ordinance.

3. *Statement of Purpose:* It is the purpose of the Floodplain Protection Zoning Overlay to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- a. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- b. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c. Minimize and control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- d. Control filling, grading, dredging, and other development which may increase erosion or flood damage; and
- e. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

4. *Objectives:* The objectives of the Floodplain Protection Zoning Overlay are:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions;
- e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains;
- f. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- g. To promote the notification that property is in a flood area to potential homebuyers.

B. Establishment of Zoning Overlay and Scope of Authority.

- 1. There is hereby established a Floodplain Protection Zoning Overlay District, (Floodplain Protection Overlay) superimposed on the other zoning districts of the City of Rocky Mount. The boundaries of the Floodplain Protection Overlay include all land located within the 100-year floodplain as defined by FEMA and

per the Flood Hazard Boundary Map and Flood Insurance Rate Map for the City of Rocky Mount dated January 20, 1982 (the “FIRMs of January 20, 1982”) and the preliminary or draft Flood Issuance Study and Flood Insurance Rate Map for Edgecombe County dated November 20, 2002, and for Nash County dated March 7, 2003 (the “Preliminary FIS”), including any revisions thereof, which maps are incorporated herein by reference and made a part of this ordinance.

2. The portion of the 100-year floodplain delineated as the floodway on the FIRMs of January 20, 1982 and the Preliminary FIS is hereby designated as the City’s regulatory floodway.
3. All existing regulations of the underlying districts remain in effect.
4. Where a conflict occurs between regulations of the underlying zoning district and the Floodplain Protection Zoning Overlay, the Zoning Overlay shall apply.
5. The Floodplain Protection Zoning Overlay is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions.

C. Compliance, Interpretation and Disclaimer.

1. *Floodplain Development Permit:* A Floodplain Development Permit shall be required in conformance with the provisions of the Floodplain Protection Zoning Overlay prior to the commencement of any land disturbance activity or any development activities.

Agricultural activities, passive recreation and open space preservation that do not require the construction of a structure or building do not require the issuance of a Floodplain Development Permit. The movement of soil, fill, removal of soil, and other changes in topography that may affect the floodplain does require the issuance of a Floodplain Development Permit. A fifty (50) foot wide vegetative buffer should be maintained along all streams and soil compaction should be minimized.

2. *Compliance:* No land disturbance activity or new construction, alteration or expansion of an existing structure or building shall occur without full compliance with the requirements of the Floodplain Protection Zoning Overlay. The standards and requirements of the Zoning Overlay and the individual subdistricts apply only to the portion of a parcel that is located within the boundaries of the Zoning Overlay and the boundaries of individual subdistricts.
3. *Interpretation:* In the interpretation and application of the Floodplain Protection Zoning Overlay all provisions shall be: (a) considered as minimum requirements; (b) liberally construed in favor of the governing body; and (c) deemed neither to limit nor repeal any other powers granted under state statutes. The Director of Planning and Development shall interpret the Floodplain Protection Zoning Overlay. Appeals of the staff's interpretation shall be made to the Planning Board.
4. *Warning and Disclaimer of Liability:* The degree of flood protection required by the Floodplain Protection Zoning Overlay is considered reasonable for regulatory

purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by built or natural causes. The Zoning Overlay does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. The Zoning Overlay shall not create liability on the part of the City of Rocky Mount or by any officer or employee thereof for any flood damages that result from reliance on the Zoning Overlay or any administrative decision lawfully made hereunder.

5. *Effect upon Outstanding Building Permits*: Nothing herein contained shall require any change in the plans, construction, size or designated use of any building, structure or part thereof for which a building permit has been granted by the Code Enforcement Administrator or his/her authorized agents before the effective date of the Floodplain Protection Zoning Overlay if the “start of construction” date is within one-hundred and eighty (180) days of the permit date.

D. Definitions. For the purposes of the Floodplain Protection Zoning Overlay, the following definitions shall apply:

1. *Accessory Structure*: Structures that are located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

2. *Addition (to an existing building)*: An extension or increase in the floor area or height of a building or structure.
3. *Area of Special Flood Hazard*: Areas of special flood hazard means and includes the land area located within the 100-year floodplain as shown on the Flood Boundary and Floodway Map prepared by the Federal Emergency Management Agency.
4. *Base Flood Elevation*: The highest height, expressed in feet above sea level, of the level of floodwaters occurring in the 100-year floodplain, otherwise known as the regulatory floodplain. Flood elevations are calculated by engineering techniques, and observed experiences may be used to verify reliability.
5. *Basement*: For floodplain management purposes, any area of the building having its floor sub grade (below ground level) on all sides.
6. *Building*: Any structure built for support, shelter, or enclosure for any occupancy or storage.
7. *Critical Facilities*: A critical facility is any property that, if flooded, would result in severe consequences to public health and safety. This includes, but is not limited to, structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, and/or water-reactive materials; hospitals, nursing homes, child and adult day care, schools, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood; police stations, fire stations, vehicle and equipment storage facilities, and emergency

operations that are needed for flood response activities before, during, and after a flood; and public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.

8. *Development*: For floodplain management purposes, any built or constructed change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
9. *Elevated Building*: For floodplain management purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns.
10. *Existing Construction*: Structures for which the start of construction commenced before the effective date of the Zoning Overlay. "Existing construction" may also be referred to as "existing structures".
11. *Finished Floor*: A habitable space in a building or structure, which is heated. For floodplain management purposes, the finished floor is the lowest enclosed area (including basement) that is heated. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest finished floor - provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of the Floodplain Protection Zoning Overlay.

12. *Flood or Flooding*: A general and temporary condition of partial or complete inundation of normally dry land areas from: (a) the overflow of inland or tidal waters; and (b) the unusual and rapid accumulation of runoff of surface waters from any source.
13. *Flood Hazard Boundary Map (FHBM)*: An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.
14. *Flood Insurance Rate Map (FIRM)*: The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.
15. *Flood Insurance Study (FIS)*: The engineering study performed by the Federal Emergency Management Agency to identify flood hazard areas, flood insurance risk zones, and other flood data in a community. The study includes Flood Boundary and Floodway Maps (FBFMs), Flood Hazard Boundary Maps (FHBMs), and/or Flood Insurance Rate Map (FIRMs). The Flood Insurance Study also includes preliminary or draft flood data released by the Federal Emergency Management Agency that is not yet final.
16. *Flood, 100-Year*: Floods that have a one (1) percent (1 in 100) chance of occurring in any given year. Also known as the "base flood". The 100-year floodplain is the area of land that would be inundated by the 100-year flood. Also known as the special flood hazard area or regulatory base flood.

17. *Flood, 500-Year*: Floods that have a zero.two (0.2) percent (1 in 500) of being equaled or exceeded in any year are referred to as the 500-year flood. The 500-year floodplain is the area of land that would be inundated by the 500-year flood.
18. *Flood Protection Elevation (FPE)*: Elevation of the highest flood, including freeboard, that a retrofitting method is intended to protect against.
19. *Flood Zone*: A geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.
20. *Floodplain*: Any land area susceptible to being inundated by flood waters from any source.
21. *Floodplain, 100-year*: The area of land that would be inundated by a 100-year flood. The 100-year floodplain includes the floodway.
22. *Flood proofing*: Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.
23. *Floodway*: The channel of a natural stream or river and portions of the floodplain adjoining the channel, which are reasonably required to carry and discharge the floodwater or flood flow of any natural stream or river. The floodway is a portion of the 100-year floodplain.
24. *Reserved*:

25. *Floodway, Regulatory*: The channel and adjacent land areas that must be reserved in order to discharge the 100-year flood (base flood) without cumulatively increasing the water surface elevation more than two-tenths (2/10) of one (1) foot.
26. *Freeboard*: Additional amount of height incorporated into the Flood Protection Elevation (FPE) to account for uncertainties in the determination of flood elevations. This additional amount of building elevation is in addition to the base flood elevation.
27. *Highest Adjacent Grade*: The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.
28. *Land Disturbing Activity*: Land disturbing activity means any activity, use, or disturbance of land in residential, industrial, educational, institutional, or commercial development, including parking lots, highways, and road construction and maintenance, that results in any change in the natural cover or topography of the land, including, without limitation, any filling, digging, earthmoving, or plowing of land, regardless of size of the area disturbed.
29. *Mean Sea Level*: For purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a FIRM are referenced.
30. *National Flood Insurance Program (NFIP)*: The NFIP is a Federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an

insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the Federal Government that states if a community will adopt and enforce a floodplain management ordinance to reduce future flood risks to new construction in Special Flood Hazard Areas, the Federal Government will make flood insurance available within the community as a financial protection against flood losses.

31. *New Construction*: For floodplain management purposes, structures for which the “start of construction” date is on or after the effective date of the Floodplain Protection Zoning Overlay and includes any subsequent improvements to such structures. This shall include without limitation manufactured homes.
32. *Nonconforming Building or Use*: Any building or use legally existing prior to the effective date hereof, which fails to comply with the provisions of the Floodplain Protection Zoning Overlay.
33. *Outdoor Storage*: The temporary or permanent warehousing, displaying or selling of supplies, inventory, equipment, or other items not within the confines of a building.
34. *Recreational Vehicle*: A vehicle which is: (a) built on a single chassis; (b) four-hundred (400) square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling, but as

temporary living quarters for recreational, camping, travel, or seasonal use.

- 35. *Reserved:*
- 36. *Remedy a Violation:* To bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the Floodplain Protection Zoning Overlay or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.
- 37. *Start of Construction:* Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within one-hundred-eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

38. *Stream, Intermittent*: A well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
39. *Stream, Perennial*: A well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
40. *Structure*: For floodplain management purposes, a walled and roofed building, a manufactured home, a gas or liquid storage tank, or other man-made facility or infrastructure that is principally above ground.
41. *Substantial Damage*: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. Substantial damage shall include electrical, heating, ventilation, plumbing, air

conditioning equipment, and other service facilities. See definition of "substantial improvement".

42. *Substantial Improvement:* Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures, which have incurred "substantial damage" as defined above, regardless of the actual repair work performed. The term does not, however, include either: (a) cost of improvement to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure. Substantial improvement shall include electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities.
43. *Variance:* A grant of relief to a person from the requirements of the Floodplain Protection Zoning Overlay which permits construction in a manner otherwise prohibited by the Zoning Overlay where specific enforcement would result in unnecessary hardship.
44. *Violation:* The failure of a structure or other development to be fully compliant with the Floodplain Protection Zoning Overlay and this ordinance. A structure or other development without the elevation certificate, other certifications, or other

evidence of compliance required in the Floodplain Protection Zoning Overlay is presumed to be in violation until such time as that documentation is provided.

E. District Boundaries.

1. *City of Rocky Mount.* Within the zoning jurisdiction of the City of Rocky Mount, the Floodplain Protection Zoning Overlay is hereby comprised of the following subdistricts, as described below. Revisions to the boundaries of the 100-year floodplain (special flood hazard area) and the 500-year floodplain that occur following the effective date of the Floodplain Protection Zoning Overlay shall require adjustment of the subdistrict boundaries to ensure consistency.
 - a. *Subdistrict A. 100-year Floodplain.* Subdistrict A includes all land located within the 100-year floodplain as defined by FEMA and per the FIRMs of January 20, 1982 and on the Preliminary FIS, or as revised.
 - b. *Subdistrict B. 500-Year Floodplain.* Subdistrict B includes all land located within the 500-year floodplain as defined by FEMA and per the FIRMs of January 20, 1982, or on the Preliminary FIS, or as revised.
 - c. *Subdistrict C. All Other Watercourses.* Subdistrict C includes all land located within fifty (50) feet of the centerline of all other watercourses or five times the width of the channel measured from the channel centerline, whichever is greater, that lack base flood elevations and/or mapped floodways, whether such watercourses are perennial streams or intermittent streams.

2. *Annexation and Extra-Territorial Jurisdiction:* In addition, upon annexation to the City of Rocky Mount, or inclusion in the Extra-Territorial Jurisdiction, the 100-year floodplain and 500-year floodplain identified by the Federal Emergency Management Agency in its Flood Hazard Boundary Map or Flood Insurance Study and Flood Insurance Rate Map(s) for Unincorporated Edgecombe or Nash Counties, with accompanying maps and other supporting data, and any revision thereto, including the Preliminary FIS, are adopted by reference and declared to be a part of the Floodplain Protection Zoning Overlay and the subdistrict boundaries noted above.

F. Use Regulations. All development shall be in compliance with the following applicable regulations.

1. *Permitted Uses:* The permitted uses of the underlying zoning district are hereby permitted, provided:
 - a. Such uses are not expressly prohibited in the Zoning Overlay per Subsection 3, Prohibited Uses; and
 - b. Such uses can meet the standards and requirements of the Zoning Overlay and are issued a Floodplain Development Permit as required herein prior to issuance of a building permit.
2. *Special Uses:* The special uses of the underlying zoning district are hereby permitted, provided:

- a. Such uses are not expressly prohibited in the Zoning Overlay per Subsection 3, Prohibited Uses; and
 - b. Such uses can meet the standards and requirements of the Zoning Overlay and are issued a Floodplain Development Permit as required herein prior to issuance of a building permit.
 - c. Such uses are approved per the Zoning Code.
3. *Prohibited Uses:* Uses not expressly permitted in the underlying zoning districts or which are not allowed as a special use, are hereby prohibited in Subdistrict A of the Floodplain Protection Zoning Overlay. In addition, the following uses are prohibited in the floodway portion of Subdistrict A:
- a. Grading, the placement of fill, the removal of fill, dredging and other modifications to topography of the subdistrict.
 - b. Residential uses.
 - c. Commercial, office, industrial, and related uses.
 - d. Quarries, borrow pits, and sand and gravel extraction.
 - e. Critical facilities.
 - f. Outdoor storage.
 - g. Accessory uses and structures, except that the following uses are permitted

in compliance with all other applicable codes and regulations:

- (1) Boat docks, boat ramps, piers, bridges, trail or hard surface stability features and similar structures (excluding parking lots) that do not have any sides with less than seventy-five (75) percent open side areas(s). There shall be no building (sided structures with or without a roof) incorporated in this allowable structure.
- (2) Fences (wooden or wire only) that have not more than twenty-five (25) percent of the fence side consisting of a solid plane (flat surface).

h. Temporary uses and structures.

No use in the floodway portion of Subdistrict A shall increase the base flood level as shown on the FIRMs of January 20, 1982, or the Preliminary FIS, whichever is lower, by more than one (1) foot. An Elevation Certificate (FEMA Form 81-65) shall be required for any development in the floodway portion of Subdistrict A.

In addition, no encroachment which causes any increase in the base flood elevation is permitted in the floodway portion of Subdistrict A.

4. *Subdistrict B: 500-Year Floodplain and Subdistrict C. All Other Watercourses.*

This ordinance is not intended to regulate development in Subdistrict B and Subdistrict C.

G. Development Standards. The following development standards shall apply to all uses and structures permitted in Subdistrict A of the Floodplain Protection Zoning Overlay.

1. *General Standards:* The following general standards shall apply to development permitted outside of the floodway in Subdistrict A of the Floodplain Protection Zoning Overlay.
 - a. *Additions.* Additions to existing buildings shall comply with the requirements for new construction.
 - b. *Altering Watercourses.* Altering watercourses is strongly discouraged. Applicants shall provide documentation of U.S. Corps of Army Engineers approval of watercourse alterations with the application for a Floodplain Development Permit.
 - c. *Anchoring.* All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 - d. *Electrical Systems.* All electrical systems shall be located a minimum of two (2) feet above the base flood elevation on the FIRMs of January 20, 1982 or one (1) foot above the base flood elevation on the Preliminary FIS, whichever is greater. However, one (1) electrical outlet with ground fault interrupt (GFI) may be permitted below the base flood elevation inside a residential dwelling unit. For the purposes of the Zoning Overlay, this requirement shall not prohibit the underground installation of on-site electrical utilities.
 - e. *Flood Resistance.* All new construction and substantial improvements

shall be constructed with materials and utility equipment resistant to flood damage.

- f. *Foundations.* A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the foundation of a building or structure (excluding individual single-family homes), and shall certify that the design and methods of construction are in accordance with accepted practices to withstand flotation, collapse, lateral movement, erosion and scour, undermining, and the effects of water and wind acting simultaneously on all building components during the base flood.
- g. *HVAC.* All HVAC systems shall be located a minimum of two (2) feet above base flood elevation on the FIRMs of January 20, 1982 or one (1) foot above the base flood elevation on the Preliminary FIS, whichever is greater, except for duct work that shall be located above the base flood elevation. Heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding, and to ensure that such facilities cannot be dislodged by floodwater.
- h. *New Construction.* Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of the Floodplain Protection Zoning Overlay, shall meet the requirements of "new construction" as contained in the Zoning Overlay.

- i. *On-Site Waste Disposal Systems.* On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- j. *Sewage Systems.* New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- k. *Tar-Pamlico Buffer.* As per Section XII.G. of the Zoning Code, a minimum one hundred-foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by the City Engineer. Desirable artificial stream bank or shoreline stabilization is permitted.

No new development is allowed in the buffer except for water development structures and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters, and maximize utilization of stormwater best management practices, including preserving natural vegetation.

- l. *Water Systems.* All new and replacement water supply systems shall be

designed to minimize or eliminate infiltration of floodwaters into the system.

2. *Specific Standards:* The following provisions are required:

a. *Accessory Uses and Structures.* Accessory uses and structures (sheds, detached garages, etc.) that are proposed to be placed outside of the floodway in Subdistrict A of the Floodplain Protection Zoning Overlay require the issuance of a Floodplain Development Permit. Accessory uses and structures that are four-hundred (400) square feet in area or less must meet the following criteria. Accessory uses and structures that are larger than four-hundred (400) square feet in area must meet all requirements of the Zoning Overlay.

- (1) Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);
- (2) Accessory structures shall be designed to have low flood damage potential;
- (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (4) Accessory structures shall be firmly anchored per the standards of the Zoning Overlay;

(5) Service facilities such as electrical and heating equipment shall meet the standards of the Zoning Overlay; and

(6) Openings to relieve hydrostatic pressure during a flood shall be provided below base flood elevation in conformance with the standards of the Zoning Overlay and as approved by the City Engineer.

b. *Critical Facilities.* Where approved in the Floodplain Protection Zoning Overlay, critical facilities shall be constructed on properly compacted fill and have the lowest floor (including basement) elevated at least one (1) foot above the elevation of the 500-year flood. A critical facility shall have at least one (1) access road connected to land outside the 500-year floodplain (Subdistrict B) that is capable of supporting a four-thousand (4,000) pound vehicle. The top of the road must be no lower than six (6) inches below the elevation of the 500-year flood.

c. *Construction, Non-Residential.*

(1) *Freeboard.* New construction or substantial improvement of any commercial, industrial, or non-residential structure shall have the lowest finished floor, including basement, elevated no lower than two (2) feet above the level of the base flood elevation on the FIRMs of January 20, 1982 or one (1) foot above the base flood elevation on the Preliminary FIS, whichever is greater. Provided,

however, when repair, reconstruction, rehabilitation, or remodeling within an existing structure is proposed, a property owner or authorized agent may make such repair, reconstruction, remodeling, or rehabilitation with the lowest finished floor elevation at or above the base flood elevation on the FIRMs of January 20, 1982, subject to the following conditions:

- i. Existing finished floor elevation is at or above base flood elevation;
- ii. Proposed finished floor elevation is at or above the existing floor elevation; and
- iii. All construction occurs within the existing building and foundation (no expansion or addition).

(2) *Measuring Lowest Finished Floor.* For the purposes of the Zoning Overlay, the lowest floor shall be measured from the top of the finished floor as defined herein.

(3) *Flood proofing.* Structures may be flood proofed to the flood protection level in lieu of elevation provided that all areas of the structure below the required elevation plus two (2) feet on the FIRMs of January 20, 1982 or one (1) foot above the required elevation on the Preliminary FIS, whichever is greater, are watertight with walls substantially impermeable to the passage of

water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

- (4) *Certification.* A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A completed Elevation Certificate (FEMA Form 81-31 as amended) shall be provided to the administrator prior to the issuance of a Certificate of Occupancy by the City (see section H.6.c.).

d. Construction, Residential.

- (1) *Freeboard.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest finished floor, including basement, elevated no lower than two (2) feet above the base flood elevation on the FIRMs of January 20, 1982 or one (1) foot above the base flood elevation on the Preliminary FIS, whichever is greater. Provided, however, when repair, reconstruction, rehabilitation, or remodeling within an existing structure is proposed, a property owner or authorized agent may make such repair, reconstruction, remodeling, or rehabilitation with the lowest finished floor elevation at or above the base flood elevation on the FIRMs of January 20, 1982, subject to the following conditions:

- i. Existing finished floor elevation is at or above base flood elevation;
 - ii. Proposed finished floor elevation is at or above the existing floor elevation; and
 - iii. All construction occurs within the existing building and foundation (no expansion or addition).
- (2) *Measuring Lowest Finished Floor.* For the purposes of the Zoning Overlay, the lowest floor shall be measured from the top of the finished floor as defined herein.
- (3) *Solid Foundations.* Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided.
- (4) *Anchoring Manufactured Homes.* Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement, in accordance with the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to NCGS § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent

strength. When the elevation of the chassis is above thirty-six (36) inches in height an engineering certification is required.

- (5) *Certification.* A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A completed Elevation Certificate (FEMA Form 81-31 as amended) shall be provided to the administrator prior to the issuance of a Certificate of Occupancy by the City (see section H.7.c.).

- e. *Elevated Buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to preclude finished living space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

- (1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

- i. Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
- ii. The bottom of all required openings shall be no higher than

one (1) foot above grade; and,

iii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

(3) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

(4) The owner shall sign an agreement to not convert the lower enclosed area to a use that is subject to water damage.

f. *Fill and Mitigation.*

(1) Fill is permitted in the portion of Subdistrict A outside of the floodway in the Floodplain Protection Zoning Overlay subject to the provisions of this Section. Fill is not permitted in the floodway portion of Subdistrict A.

(2) It is the policy of the City to limit the amount of fill placed in Subdistrict A to maximize floodwater carrying capacity. But in

recognizing the necessity to provide flexibility the following standards are adopted. The City Engineer shall approve all plans for fill and mitigation.

(3) The applicant for a Floodplain Development Permit and/or Special Use Permit may propose one of the following options relative to placement of fill and mitigation. Fill mitigation, where required, shall be calculated up to the base flood elevation of the subject site.

i. *Option 1.* No mitigation shall be required if the standard for the appropriate category is met. For category 1, the City Engineer may permit additional fill not to exceed twenty (20) percent of the amount allowed to provide for supporting structures (such as driveways and sidewalks), but not accessory uses and structures.

TABLE INSET:

Category	Portion of Parcel in Subdistrict A of the Floodplain Protection Zoning Overlay	Amount of Permitted Fill Without Required Mitigation (cubic yards)
1	1/4 acre	200
2	1/2 acre	400
3	3/4 acre	600
4	1 acre	800
5	2 acres	1,600
6	Each additional acre	800

ii. *Option 2.* For parcels where the proposed fill exceeds the category under subsection i, the applicant/owner shall provide compensatory storage to offset the amount of lost

floodplain storage. The amount of compensatory storage shall be equivalent to the amount of fill in excess of the category of subsection i. The City Engineer shall approve the amount and location of compensatory storage. The location shall be provided on the parcel on which fill is permitted. If such parcel cannot reasonably accommodate the compensatory storage, then it shall be located in the same sub watershed/sub basin as the parcel on which fill is permitted. A conservation easement shall be placed on the compensatory storage facility to prevent development of the site or removal of the storage facility in perpetuity. The easement shall be dedicated to the City.

- iii. *Option 3.* A payment may be made to the City of a fee that can be used in a stormwater mitigation project. For category 1 through 4, the City Engineer shall approve the proposal under this option. For category 5 and 6, the Planning Board shall approve the proposal to pay a fee. The fee shall be established by City Council and shall be paid to the City within thirty (30) days of the approval of a Floodplain Development Permit. The fee shall be placed in a special fund and used by the City to construct equivalent compensatory storage on a parcel owned by the City within the same sub watershed/sub basin.

g. *Manufactured Home Parks.* The following standards shall apply to manufactured home parks:

(1) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved and substantially damaged manufactured home parks or manufactured home subdivisions located within flood prone areas. This plan shall be filed with and approved by the Director of Planning and Development and the City's Emergency Management coordinator.

(2) Within existing manufactured home parks, individual homes may be replaced under the following conditions:

i. The replacement unit is of similar size, located on an approved space within the park;

ii. The location of the replacement unit meets requirements for building separation and vehicle parking; and

iii. The replacement unit is elevated as required by the standards contained in this Floodplain Protection Overlay.

(3) Manufactured homes that are placed or substantially improved on sites:

i. Outside of the manufactured home park or subdivision,

- ii. In a new manufactured home park or subdivision,
 - iii. In an expansion to an existing manufactured home park or subdivision, or
 - iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of two (2) feet above the base flood elevation on the FIRMs of January 20, 1982, or one (1) foot above the Preliminary FIS, whichever is greater, and is securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
- (4) Manufactured homes that are not subject to Section G.2.g(3) above shall be elevated so that either:
- i. The lowest floor of the manufactured home is a minimum of two (2) feet above the base flood elevation on the FIRMs of January 20, 1982, or one (1) foot above the Preliminary FIS, whichever is greater, or
 - ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent

strength that are no less than thirty-six (36) inches in height above grade and are securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

h. *Outdoor Storage.* The following standards shall apply to outdoor storage:

- (1) Outdoor storage is prohibited in the floodway portion of Subdistrict A.
- (2) Outdoor storage is a special use in the portion of Subdistrict A outside of the floodway. As a special use, outdoor storage must meet one (1) of the following standards:
 - i. The location of the outdoor storage shall be above the base flood elevation on the FIRMs of January 20, 1982, or the Preliminary FIS, whichever is greater, plus two (2) feet; or
 - ii. The applicant shall demonstrate appropriate measures that will secure such outdoor storage from leaving the site due to storm flow in the event of a flood or storm event, to the satisfaction of the Director of Planning and Development or Planning Board, as required.

i. *Recreational Vehicles.* A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick-

disconnect type utilities and security devices, and has no permanently attached additions. Recreation vehicles placed on-sites shall either:

- (1) Be fully licensed and ready for highway use; or
- (2) Meet the requirements of this overlay including obtaining a Floodplain Development Permit.
- (3) Be placed on the site for fewer than one-hundred-eighty (180) consecutive days.

j. *Subdivisions and Major Developments.*

- (1) Proposals for subdivisions and major developments shall be consistent with the need to minimize flood damage.
- (2) Proposals for subdivisions and major developments shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) Proposals for subdivisions and major developments shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) Base flood elevation data shall be provided for all subdivision proposals and other proposed development.
- (5) Preliminary and final plats shall continue to indicate subdistrict boundaries.

(6) The design of subdivisions and major developments that are partially impacted by the Zoning Overlay and individual subdistricts shall ensure that components and phases of such developments are integrated and interconnected to the extent feasible. Master planning of such sites shall take these considerations into account.

k. *Temporary Uses and Structures.* Prior to the issuance of a Floodplain Development Permit for a temporary use and/or structure the following requirements must be met:

(1) All applicants must submit to the City prior to the issuance of the Floodplain Development Permit a plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information:

- i. A specified time period for which the temporary use will be permitted;
- ii. The name, address and phone number of the individual responsible for the removal of the temporary structure;
- iii. The time frame prior to the event at which a structure will be removed;
- iv. A copy of the contract or other suitable instrument with a

trucking company to insure the availability of removal equipment when needed; and

- v. Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

- (2) The above information shall be submitted with the application for a Floodplain Development Permit.

H. Administration.

1. *NFIP Administrator:*

- a. The City's Planning and Development Director is hereby designated as the NFIP Administrator. The Director may designate staff to assist in the administration of the NFIP Program and this Overlay District.
- b. The duties shall include:
 - (1) Review and approve Class 1 Floodplain Development Permits to assure that the requirements of the Floodplain Protection Zoning Overlay have been satisfied;
 - (2) Issue Class 2 Floodplain Development Permits approved by the Planning Board. In issuing such permits, the Director shall certify that all conditions required by the Board have been met by the

Applicant prior to issuing the permit;

- (3) Advise permittee that additional Federal or State permits may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the Floodplain Development Permit;
- (4) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
- (5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
- (6) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of the Floodplain Protection Zoning Overlay are met;
- (7) Obtain the actual elevation in relation to mean sea level of the lowest finished floor including basement of all new or substantially improved structures;

- (8) Obtain the actual elevation in relation to mean sea level to which new or substantially improved structures have been flood proofed;
- (9) When flood proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect;
- (10) Where interpretation is needed as to the exact location of boundaries of the areas of the 100-year floodplain, 500-year floodplain, and/or a Zoning Overlay subdistrict make the necessary interpretation. Any person contesting the location of the boundary shall have a right of appeal to Planning Board within thirty (30) days of receipt of the written interpretation;
- (11) When base flood elevation data or floodway data has not been provided per the National Flood Insurance Program, obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a Federal, State, or other source, including data developed pursuant to the Floodplain Protection Zoning Overlay, in order to administer the provisions of the Zoning Overlay;
- (12) When the exact location of boundaries of the 100-year floodplain (special flood hazard area), 500-year floodplain, and/or a Zoning Overlay subdistrict conflict with the current, natural topography information at the site the property owner may apply and be

approved for a Letter of Map Amendment (LOMA) by FEMA. A copy of the Letter of Map Amendment issued from FEMA will be maintained by the administrator in the permit file;

- (13) Make on-site inspections of projects;
- (14) Serve notices of zoning violations, revoke Floodplain Development Permits and take corrective actions;
- (15) Maintain all records pertaining to the administration of the Floodplain Protection Zoning Overlay and make these records available for public inspection; and
- (16) Monitor development activity, including the placement or removal of fill, in the Floodplain Protection Zoning Overlay through on-site inspections on a regular and ongoing basis. Identify illegal activity and issue stop work orders

2. *Code Enforcement Administrator:*

- a. In administering the building code, the Code Enforcement Administrator and/or the Administrator's representatives shall assist the Director of Planning and Development as directed in administering the requirements of the Floodplain Protection Zoning Overlay.
- b. In particular, the approval of a Building Permit shall be in full conformance with an approved Floodplain Development Permit.

- c. The Administrator can issue a stop work order for construction activity that is in violation of an approved Floodplain Development Permit.

3. *Zoning Inspector:*

- a. In administering the zoning code, the Zoning Inspector shall assist the Director of Planning and Development as directed in administering the requirements of the Floodplain Protection Zoning Overlay.
- b. In particular, the approval of a Zoning Certificate shall be in full conformance with an approved Floodplain Development Permit.

4. *Floodplain Development Permit:*

a. *Standards.*

(1) *Floodplain Development Permit.* A Floodplain Development Permit shall be required before any land disturbance activity, new construction, or substantial improvement, alteration or expansion of an existing structure or building may take place in the Floodplain Protection Zoning Overlay.

(2) *Expiration of Permit.* The approved Floodplain Development Permit shall expire if a minimum of fifty (50) percent of the work approved has not been completed within twenty-four (24) months of issuance of the permit. If in that period there has been no significant change to the project and no significant changes to the

Floodplain Protection Zoning Overlay, then the Director of Planning and Development may continue the Floodplain Development Permit for another twenty-four (24) months.

(3) *Class 1 and Class 2 Permits.* The process for issuing a Floodplain Development Permit is administrative. There are two (2) permit types based on the nature of the proposed development.

i. *Class 1 Permit.* The Class 1 permit shall be reviewed and approved by the Director of Planning and Development.

ii. *Class 2 Permit.* The Class 2 permit shall be reviewed and approved by the Planning Board, with a recommendation by the Director of Planning and Development.

The following table indicates the development activity that requires the appropriate permit. Any use not explicitly noted shall require a minor permit, unless in the opinion of the Director of Planning and Development the development is of sufficient size and magnitude that a major permit is appropriate.

TABLE INSET:

Development Activity	Class	Staff Approval	Planning Board Approval
Accessory uses and structures	1	Yes	No
Agricultural uses only when requiring construction of a structure or building	1	Yes	No
Commercial, office, industrial, religious and related uses with an area of 7,000 square feet or less	1	Yes	No

Commercial, office, industrial, religious and related uses with an area of more than 7,000 square feet	2	No	Yes
Special uses ¹	2	No	Yes
Critical facility	2	No	Yes
Grading, placement of fill, removal of fill and other modifications of topography—Category 1—4	1	Yes	No
Grading, placement of fill, removal of fill and other modifications of topography—Category 5 and 6	2	No	Yes
Manufactured home park	2	No	Yes
Nonconforming uses	2	No	Yes
Off-street parking areas and commercial drives	1	Yes	No
Outdoor storage that does not meet the definition of a critical facility	1	Yes	No
Outdoor storage that meets the definition of a critical facility	2	No	Yes
Passive recreation only when requiring construction of a structure or building	1	Yes	No
Public building, structure or facility	2	No	Yes
Recreational vehicles	1	Yes	No
Residential structure (includes manufactured home)	1	Yes	No
Residential subdivision plat--Four lots or less	1	Yes	No
Residential subdivision plat--More than four lots	2	No	Yes
Temporary uses and structures	1	Yes	No

Notes:

1 Special Uses shall govern over all other uses relative to permit process.

2 "Removal of fill" includes all quarries, borrow pits, and sand and gravel extraction.

b. *Floodplain Development Permit--Class 1.*

- (1) *Application.* The applicant shall submit a complete application to the Director of Planning and Development, who will certify as to its completeness. Incomplete applications will not be considered.
- (2) *Site Plan.* The application shall include a site plan drawn to scale (one (1) inch equals one-hundred (100) feet) that indicates existing

and proposed topography (two (2) foot contours), elevations, the Floodplain Protection Zoning Overlay boundaries, structures (existing and proposed), utilities, easements, and other site improvements. The site plan shall be prepared by a registered surveyor or civil engineer. City staff will verify the location of the proposed development relative to the regulatory floodplains.

- (3) *Process.* Once a complete application has been certified by the Director of Planning and Development, it will be considered. The Director will have no less than ten (10) working days and no more than twenty (20) working days to review the application and provide a written decision to the applicant. Notification to adjacent property owners by the City shall occur by certified letter once the application has been certified as complete.

Applicants are encouraged to meet with the Director and/or his/her representative to review the application prior to submittal. The Director shall apply the criteria indicated below (Section c4., Basis for Decision) in considering the application. In rendering the decision, the Director shall address each of these criteria. A written report shall be prepared. Appropriate conditions may be placed on the applicant by the Director.

- (4) *Basis for Decision.* In considering applications for Floodplain

Development Permits, all technical evaluations, relevant factors, and standards specified in other sections of the Floodplain Protection Zoning Overlay shall be considered. A report shall be prepared indicating how the intent and objectives of the Floodplain Protection Zoning Overlay are fully met by the proposal and indicating that all applicable standards and requirements are met or adjustments are recommended to the proposal to ensure all standards and requirements are met. The following criteria shall be considered and conditions may be placed on the applicant to ensure that they are addressed sufficiently to ensure the public health, safety and general welfare are protected to the degree possible.

- i. The danger that materials may be swept onto other lands to the injury of others;
- ii. The danger to life and property due to flooding or erosion damage;
- iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- iv. The importance of the services provided by the proposed facility to the community;

- v. The necessity to the facility of a waterfront location, where applicable;
- vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- vii. The compatibility of the proposed use with existing and anticipated development;
- viii. The relationship of the proposed use to the Comprehensive Plan and floodplain management program;
- ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- x. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- xi. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(5) *Appeal.* The decision of the Director may be appealed to the Planning Board within thirty (30) days of receipt of the written decision.

c. *Floodplain Development Permit--Class 2.*

- (1) *Application.* The applicant shall submit a complete application to the Director of Planning and Development, who will certify as to its completeness. Incomplete applications will not be scheduled for consideration by the Planning Board. Once a complete submittal is certified, the Director will schedule the application before the Planning Board. A submittal schedule will be established by the Planning Board each year.
- (2) *Site Plan.* The application shall include a site plan drawn to scale (one (1) inch equals one-hundred (100) feet) that indicates existing and proposed topography (two (2) foot contour), elevations, the Floodplain Protection Zoning Overlay boundaries, structures (existing and proposed), utilities, easements, and other site improvements. The site plan shall be prepared by a registered surveyor or civil engineer. City staff will verify the location of the proposed development relative to the regulatory floodplains.
- (3) *Process.* Once a complete application has been certified by the Director of Planning and Development, it will be placed on the agenda of the Planning Board. Notification to adjacent property owners by the City shall occur by certified letter once the application has been certified as complete. The Director will have no less than ten (10) working days and no more than twenty (20)

working days to review the application and provide a written recommendation with the application to the Planning Board. Applicants are encouraged to meet with the Director and/or his/her representative to review the application prior to submittal.

(4) *Basis for Decision.* In considering applications for Floodplain Development Permits, all technical evaluations, relevant factors, and standards specified in other sections of the Floodplain Protection Zoning Overlay shall be considered. A report shall be prepared indicating how the intent and objectives of the Floodplain Protection Zoning Overlay are fully met by the proposal and indicating that all applicable standards and requirements are met or adjustments are recommended to the proposal to ensure all standards and requirements are met. The following criteria shall be considered and conditions may be placed on the applicant to ensure that they are addressed sufficiently to ensure the public health, safety and general welfare are protected to the degree possible.

- i. The danger that materials may be swept onto other lands to the injury of others;
- ii. The danger to life and property due to flooding or erosion damage;

- iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- iv. The importance of the services provided by the proposed facility to the community;
- v. The necessity to the facility of a waterfront location, where applicable;
- vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- vii. The compatibility of the proposed use with existing and anticipated development;
- viii. The relationship of the proposed use to the Comprehensive Plan and floodplain management program;
- ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- x. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- xi. The costs of providing governmental services during and

after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

- (5) *Appeal.* The decision of the Planning Board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review shall be filed with the clerk of superior court of the county in which the property is located within thirty (30) days after service of the written decision on the aggrieved party.

d. *Additional Submittal Information.*

- (1) *Elevation.* Where base flood elevation data is available, the application shall indicate the elevation of the lower floor (including basement) of all new and improved structures. If a non-residential structure is to be flood-proofed, the application shall indicate the elevation to which the structure will be flood proofed.
- (2) *Watercourse Alterations.* Where any watercourse will be altered or relocated as a result of proposed development, the application shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a

map showing the location of the proposed watercourse alteration or relocation. Where applicable, evidence of U.S. Corps of Engineers approval shall be submitted with the application.

5. *Variances:*

- a. *Board of Adjustment.* The Board of Adjustment shall hear and decide requests for variances from the requirements of the Floodplain Protection Zoning Overlay.
- b. *Appeals.* The decision of the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review shall be filed with the clerk of superior court of the county in which the property is located within thirty (30) days after service of the written decision on the aggrieved party.
- c. *Historic Structures.* Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- d. *Basis for Decision.* In order to approve a variance request, the Board of Adjustment shall consider all technical evaluations, relevant factors, standards specified in other sections of the Floodplain Protection Zoning Overlay, and the following considerations:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if

applicable, expected at the site; and

- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

e. *Application.* A written report addressing each of the above factors shall be submitted with the application for a variance.

f. *Conditions.* Upon consideration of the factors listed above and the purposes of the Floodplain Protection Zoning Overlay, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of the Zoning Overlay. The following standards shall apply:

- (1) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result;
- (2) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or other ordinances; and
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard,

to afford relief.

- g. *Basis for Decision.* Variances shall only be issued upon all of the following findings, which shall be referenced in the board's decision:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances, taking into account the criteria of subsection d above.
- h. *Notice.* Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.
- i. *Written Record.* The administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

6. *Zoning Certificates, Building Permits and FEMA Certificates:*

a. *Zoning Certificate.*

- (1) The application of a Zoning Certificate shall be fully consistent with the approval of a Floodplain Development Permit, including fulfilling all conditions of the permit approval.
- (2) The approval of a Zoning Certificate by the City shall only occur if the Zoning Certificate is in full conformance with an approved Floodplain Development Permit. In the case of a conflict, the requirements of the Floodplain Protection Zoning Overlay and the approved Floodplain Development Permit shall take precedence.

b. *Building Permit.*

- (1) The application of a Building Permit shall be fully consistent with the approval of a Floodplain Development Permit, including fulfilling all conditions of the permit approval.
- (2) The approval of a Building Permit by the City shall be in full conformance with an approved Floodplain Development Permit.

c. *FEMA Certificates.*

- (1) An Elevation Certificate (FEMA Form 81-31) or a Flood proofing Certificate (FEMA Form 81-65) is required. It shall be the duty of

the permit holder to submit to the City a certification of the elevation of the lowest floor or flood proofed elevation whichever is applicable, and HVAC equipment, as built in relation to mean sea level. The Elevation Certificate shall be based upon a survey prepared by a professional surveyor.

- (2) The Flood proofing Certificate shall be prepared by a registered professional engineer or architect and shall indicate that the non-residential flood proofed structure meets the flood proofing criteria of the Floodplain Protection Zoning Overlay and FEMA.
- (3) These certificates shall be filed with and approved by the City prior to the issuance of a Certificate of Occupancy by the City.

7. *Penalties:*

- a. Any person who violates any provisions of this ordinance or fails to comply with any of the requirements of the Floodplain Protection Zoning Overlay, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be guilty a misdemeanor as provided in N.C. Gen. Stat. § 14-4 and upon conviction thereof, shall be subject to a maximum fine of five-hundred (500) dollars, or imprisonment, or both. Each day such violation continues shall be considered a separate offense.
- b. Nothing herein contained shall prevent the City of Rocky Mount from

taking such other lawful action as is necessary to prevent or remedy any violation.

8. *Nonconformities:*

- a. Nonconforming buildings or uses may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of the Floodplain Protection Zoning Overlay.

Section 2. This ordinance is effective from and after its adoption.

INTRODUCED: _____

ADOPTED: _____